

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

Case No. MD-05-1085A

THOMAS R. BRANDT, M.D.

**CONSENT AGREEMENT FOR A
LETTER OF REPRIMAND AND
PROBATION**

Holder of License No. 25293
For the Practice of Allopathic Medicine
In the State of Arizona

CONSENT AGREEMENT

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and Thomas R. Brandt, M.D. ("Respondent"), the parties agreed to the following disposition of this matter.

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement"). Respondent acknowledges that he has the right to consult with legal counsel regarding this matter.

2. By entering into this Consent Agreement, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. This Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. All admissions made by Respondent are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by Respondent are not intended or made for any other use, such as in the context of another state or federal government

1 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
2 any other state or federal court.

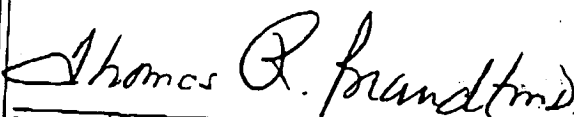
3 5. Upon signing this agreement, and returning this document (or a copy
4 thereof) to the Board's Executive Director, Respondent may not revoke the acceptance of
5 the Consent Agreement. Respondent may not make any modifications to the document.
6 Any modifications to this original document are ineffective and void unless mutually
7 approved by the parties.

8 6. This Consent Agreement, once approved and signed, is a public record that
9 will be publicly disseminated as a formal action of the Board and will be reported to the
10 National Practitioner Data Bank and to the Arizona Medical Board's website.

11 7. If any part of the Consent Agreement is later declared void or otherwise
12 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in
13 force and effect.

14 8. Any violation of this Consent Agreement constitutes unprofessional conduct
15 pursuant to A.R.S. §32-1401(27)(r) - ("[v]iolating a formal order, probation, consent
16 agreement or stipulation issued or entered into by the board or its executive director
17 under this chapter.") and may result in disciplinary action pursuant to A.R.S. §32-1451.

18 9. ***Respondent has read and understands the condition(s) of probation.***
19

20
21 
22 THOMAS R. BRANDT, M.D.

DATED: 8/28/06

1 **FINDINGS OF FACT**

2 1. The Board is the duly constituted authority for the regulation and control of
3 the practice of allopathic medicine in the State of Arizona.

4 2. Respondent is the holder of license number 25293 for the practice of
5 allopathic medicine in the State of Arizona.

6 3. The Board initiated case number MD-05-1085A after receiving a complaint
7 regarding Respondent's arrest for driving under the influence (DUI) in Nebraska.

8 4. On April 23, 2005 Respondent attended a fundraiser gala while on call and
9 consumed several glasses of wine. Respondent was paged to the hospital to perform a
10 procedure. Respondent drove to the hospital, performed the procedure and left the
11 hospital. On the drive from the hospital Respondent was pulled over, arrested, charged
12 and later sentenced with DUI. His blood alcohol level was 0.109.

13 5. On May 6, 2005 the Nebraska Board of Medicine and Surgery ("Nebraska
14 Board") temporarily suspended Respondent's license pending an evaluation for drug and
15 alcohol abuse.

16 6. On June 2, 2005 Respondent entered an inpatient treatment center for
17 substance abuse. He was successfully discharged on June 30, 2005.

18 7. On October 4, 2005 Respondent entered into a Settlement Agreement with
19 Nebraska Board for five year probation for drug and alcohol monitoring.

20 8. On October 20, 2005 Respondent reported his DUI arrest to the Board.
21 Respondent failed to report his DUI within 10 days of the charge. A.R.S. § 32-3208(A).

22 **CONCLUSIONS OF LAW**

23 1. The Board possesses jurisdiction over the subject matter hereof and over
24 Respondent.
25

2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(o) - ("[a]ction that is taken against a doctor of medicine by another licensing or regulatory jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of medicine, the doctor's medical incompetence or for unprofessional conduct as defined by that jurisdiction and that corresponds directly or indirectly to an act of unprofessional conduct prescribed by this paragraph. The action taken may include refusing, denying, revoking or suspending a license by that jurisdiction or a surrendering of license to that jurisdiction, otherwise limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on probation by that jurisdiction.").

3. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(a) - ("violating any federal or state laws or rules and regulations applicable to the practice of medicine."). Specifically, A.R.S. § 32-3208(A) - ("a health professional who has been charged with a misdemeanor involving conduct that may affect patient safety or a felony after receiving or renewing a license or certificate must notify the health professional's regulatory board in writing within ten working days after the charge is filed.").

4. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(f) - (“[h]abitual intemperance in the use of alcohol or habitual substance abuse.”).

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand for performing a surgical procedure while intoxicated.

1 2. Respondent is placed on Probation for five years¹ with the following terms and
2 conditions:

3 a. Respondent shall submit quarterly declarations under penalty of perjury on
4 forms provided by the Board, stating whether there has been compliance with all
5 conditions of probation. The declarations shall be submitted on or before the 15th of
6 March, June, September and December of each year, beginning on or before June, 2006.

7 b.1. **Participation.** Physician shall promptly enroll in and participate in the
8 Board's Monitored Aftercare Program ("MAP"). As part of participation in MAP, Physician
9 shall cooperate with Board Staff and contracting MAP supervisors. Physician's
10 participation in MAP may be unilaterally terminated at the discretion of the Executive
11 Director at any time after issuance of this Agreement, with or without cause for
12 termination.

13 2. This Agreement is subject to modification by mutual consent unless
14 otherwise specified herein. If the parties do not mutually agree to future amendments to
15 this Agreement or, alternatively, if the Executive Director concludes that it is appropriate,
16 this matter may be referred for further proceedings or investigation to the extent
17 authorized by statute or other applicable law to consider all relevant issues of Physician's
18 professional conduct and ability to safely and ethically engage in the practice of medicine.

19 3. This Agreement will expire at the end of five (5) years unless the Executive
20 Director orders its earlier termination or extends its time period; or alternatively, this
21 Agreement may be terminated pursuant to proceedings conducted under A.R.S. § 32-
22 1451.

23 4. **Relapse Prevention Group.** Physician shall attend MAP's relapse
24 prevention group sessions one time per week for the duration of this Agreement, unless
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¹ Probation to run concurrent with Nebraska Board Order.

1 excused by the MAP relapse prevention group facilitator for good cause such as illness
2 or vacation. Physician shall instruct the MAP relapse prevention group facilitator to
3 release to Board Staff, upon request, all records relating to Physician's treatment, and to
4 submit monthly reports to Board Staff regarding attendance and progress. The reports
5 shall be submitted on or before the 10th day of each month.

6 **5. 12 Step or Self-Help Group Meetings.** Physician shall attend ninety 12-
7 step meetings or other self-help group meetings appropriate for substance abuse and
8 approved by Board Staff, for a period of ninety days beginning not later than either (a) the
9 first day following Physician's discharge from chemical dependency treatment or (b) the
10 date of this Agreement.

11 **6.** Following completion of the ninety meetings in ninety days, Physician shall
12 participate in a 12-step recovery program or other self-help program appropriate for
13 substance abuse as recommended by the MAP Director and approved by Board Staff.
14 Physician shall attend a minimum of three 12-step or other self-help program meetings
15 per week.

16 **7. Board-Staff Approved Primary Care Physician.** Physician shall promptly
17 obtain a primary care physician and shall submit the name of the physician in writing to
18 Board Staff for approval. The Board Staff approved primary care physician ("PCP") shall
19 be in charge of providing and coordinating Physician's medical care and treatment.
20 Except in an *Emergency*, Physician shall obtain medical care and treatment only from
21 the PCP and from health care providers to whom Physician is referred by the PCP.
22 Physician shall request that the PCP document all referrals in the medical record.
23 Physician shall promptly inform the PCP of Physician's rehabilitation efforts and provide a
24 copy of this Agreement to the PCP. Physician shall also inform all other health care
25 providers who provide medical care or treatment that Physician is participating in MAP.

1 a. “*Emergency*” means a serious accident or sudden illness that, if not treated
2 immediately, may result in a long-term medical problem or loss of life.

3 8. **Medication.** Except in an *Emergency*, Physician shall take no *Medication*
4 unless the PCP or other health care provider to whom the PCP refers Physician
5 prescribes the *Medication*. Physician shall not self-prescribe any *Medication*.

6 a. “*Medication*” means a prescription-only drug, controlled substance, and
7 over-the counter preparation, other than plain aspirin, plain ibuprofen, and plain
8 acetaminophen.

9 9. If a controlled substance is prescribed, dispensed, or is administered to
10 Physician by any person other than the PCP, Physician shall notify the PCP in writing
11 within 48 hours and notify the MAP Director immediately. The notification shall contain all
12 information required for the medication log entry specified in paragraph 10. Physician
13 shall request that the notification be made a part of the medical record. This paragraph
14 does not authorize Physician to take any *Medication* other than in accordance with
15 paragraph 8.

16 10. **Medication Log.** Physician shall maintain a current legible log of all
17 *Medication* taken by or administered to Physician, and shall make the log available to
18 Board Staff upon request. For *Medication* (other than controlled substances) taken on
19 an on-going basis, Physician may comply with this paragraph by logging the first and last
20 administration of the *Medication* and all changes in dosage or frequency. The log, at a
21 minimum, shall include the following:

- 22 a. Name and dosage of Medication taken or administered;
23 b. Date taken or administered;
24 c. Name of prescribing or administering physician;
25 d. Reason Medication was prescribed or administered.

1 This paragraph does not authorize Physician to take any *Medication* other than in
2 accordance with paragraph 8.

3 **11. No Alcohol or Poppy Seeds.** Physician shall not consume alcohol or any
4 food or other substance containing poppy seeds or alcohol.

5 **12. Biological Fluid Collection.** During all times that Physician is physically
6 present in the State of Arizona and such other times as Board Staff may direct, Physician
7 shall promptly comply with requests from Board Staff or the MAP Director to submit to
8 witnessed biological fluid collection. If Physician is directed to contact an automated
9 telephone message system to determine when to provide a specimen, Physician shall do
10 so within the hours specified by Board Staff. For the purposes of this paragraph, in the
11 case of an in-person request, "promptly comply" means "immediately." In the case of a
12 telephonic request, "promptly comply" means that, except for good cause shown,
13 Physician shall appear and submit to specimen collection not later than two hours after
14 telephonic notice to appear is given. The Board in its sole discretion shall determine
15 good cause.

16 **13.** Physician shall provide Board Staff in writing with one telephone number
17 that shall be used to contact Physician on a 24 hour per day/seven day per week basis to
18 submit to biological fluid collection. For the purposes of this section, telephonic notice
19 shall be deemed given at the time a message to appear is left at the contact telephone
20 number provided by Physician. Physician authorizes any person or organization
21 conducting tests on the collected samples to provide testing results to the Board and the
22 MAP Director.

23 **14.** Physician shall cooperate with collection site personnel regarding biological
24 fluid collection. Repeated complaints from collection site personnel that Physician is not
25 cooperating regarding collection may be grounds for termination from MAP.

1 **15. Out of State Travel and/or Unavailability at Home or Office Telephone**

2 **Number.** Physician shall provide Board Staff at least three business days advance
3 written notice of any plans to be away from office or home when such absence would
4 prohibit Physician from responding to an order to provide a biological fluid specimen or
5 from responding to communications from the Board. The notice shall state the reason for
6 the intended absence from home or office, and shall provide a telephone number that
7 may be used to contact Physician.

8 **16. Payment for Services.** Physician shall pay for all costs, except contractor
9 costs, associated with participating in MAP at time service is rendered, if required, or
10 within 30 days of each invoice sent to Physician.

11 **17. Examination.** Physician shall submit to mental, physical, and medical
12 competency examinations at such times and under such conditions as directed by the
13 Executive Director to assist Board Staff in monitoring compliance with the terms of this
14 Agreement and Physician's ability to safely engage in the practice of medicine.

15 **18. Treatment.** Physician shall submit to all medical, substance abuse, and
16 mental health care and treatment ordered by the Executive Director.

17 **19. Obey All Laws.** Physician shall obey all federal, state and local laws, and
18 all rules governing the practice of medicine in the State of Arizona.

19 **20. Interviews.** Physician shall appear in person before the Board and its Staff
20 and MAP committees for interviews upon request, upon reasonable notice.

21 **21. Address and Phone Changes, Notice.** Physician shall immediately notify
22 the Board in writing of any change in office or home addresses and telephone numbers.

23 **22. Relapse, Violation.** In the event of chemical dependency relapse by
24 Physician or use of drugs or alcohol by Physician in violation of this Agreement,
25 Physician shall promptly enter into a Interim Consent Agreement for Practice Restriction

1 that requires, among other things, that Physician not practice medicine until such time as
2 Physician successfully completes a long-term inpatient or residential treatment program
3 for chemical dependency designated by Board Staff and obtains the affirmative approval
4 from the Board or the Executive Director to return to the practice of medicine. Prior to
5 approving Physician's request to return to the practice of medicine, Physician may be
6 required to submit to witnessed biological fluid collection, undergo any combination of a
7 physical examination, psychiatric or psychological evaluation and/or to successfully pass
8 the special purpose licensing examination or Board Staff may conduct interviews for the
9 purposes of assisting it in determining Physician's ability to safely return to the practice of
10 medicine. **In no respect shall the terms of this paragraph restrict the Board's**
11 **authority to initiate and take disciplinary action for violation of this Agreement.**

12 **23. Inactivation of License:** During the term of this Agreement, Physician
13 may not request that Physician's license be inactivated.

14 **24. Notice Requirements.**

15 (a) Physician shall immediately provide a copy of this Agreement to all
16 employers and hospitals and free standing surgery centers where Physician currently has
17 privileges. Within 30 days of the date of the Agreement, Physician shall provide the
18 Board with a signed statement that Physician has complied with this notification
19 requirement. Upon any change in employer or upon the granting of privileges at
20 additional hospitals or free standing surgery centers, Physician shall provide the
21 employer, hospital or free standing surgery center with a copy of this Agreement. Within
22 30 days of a change in employer or upon the granting of privileges at additional hospitals
23 or free standing surgery centers, Physician shall provide the Board with a signed
24 statement that Physician has complied with this notification requirement.
25

1 (b) Physician is further required to notify, in writing, all employers, hospitals
2 and free standing surgery centers where Physician currently has, or in the future gains
3 employment or privileges, of a chemical dependency relapse, use of drugs or alcohol in
4 violation of this Agreement and/or entry into a treatment program. Physician shall
5 provide the Board with written confirmation that Physician has complied with this
6 notification requirement within 7 days of any of these events.

7 **25. Non-Disciplinary, Public Record.** This Agreement is not a disciplinary
8 action. This document is a public record, however, pursuant to the discretion vested in
9 the Board, this Agreement will not be released to the public. *Carlson v. Pima County*,
10 141 Ariz. 487, 491, 687 P.2d 1242, 1246 (1984).

11 **26. Out-of State.** In the event Physician resides or practices as a physician in
12 a state other than Arizona, Physician shall participate in the rehabilitation program
13 sponsored by that state's medical licensing authority or medical society. Physician shall
14 cause the monitoring state's program to provide written reports to the Board regarding
15 Physician's attendance, participation, and monitoring. The reports shall be due quarterly
16 on or before the 15th day of March, June, September, and December of each year, until
17 the Board terminates this requirement in writing. The monitoring state's program and
18 Physician shall immediately notify the Board if Physician: a) is non-compliant with any
19 aspect of the monitoring requirements; b) relapses; c) tests positive for controlled
20 substances; d) has low specific gravity urine drug test(s), missed and/or late urine drug
21 tests, or otherwise rejected urine drug tests; and e) is required to undergo any additional
22 treatment.

23 **27.** This Agreement is a voluntary monitoring agreement to rehabilitate
24 Physician and ensure Physician's ability to safely practice medicine. It also supersedes
25

1 all previous agreements and amendments thereto between the Board and/or the
2 Executive Director and Physician.

3
4 DATED AND EFFECTIVE this 30th day of August, 2006.

5
6
7 [SEAL]



ARIZONA MEDICAL BOARD

8
9 By Timothy C. Miller
10 TIMOTHY C. MILLER, J.D.
11 Executive Director

12 ORIGINAL of the foregoing filed this
13 30th day of August, 2006 with:

14 Arizona Medical Board
15 9545 E. Doubletree Ranch Road
16 Scottsdale, AZ 85258

17 EXECUTED COPY of the foregoing mailed
18 this 30th day of August, 2006 to:

19 Thomas R. Brandt, M.D.
20 Address of Record

21 For M. Gray
22 Investigational Review
23
24
25